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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JUDITH KAY COGBURN,

Defendant and Appellant.

B268226

(Los Angeles County
Super. Ct. Nos. SA085913
& SA086508)

APPEALS from judgments of the Superior Court of Los Angeles County,
Mark E. Windham, Judge. Affirmed.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Appellant Judith Cogburn pled guilty to second degree burglary (Pen. Code, § 459)¹ in case No. SA085913 and to first degree burglary (§ 459) in case No. SA086508. In each case, Cogburn was placed on probation. Following probation violation proceedings, the trial court imposed the middle base term sentence of four years in the first degree burglary case and a concurrent upper base term of three years in the second degree burglary case. Appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After we notified Cogburn she could bring to our attention any issue she wished our court to review, Cogburn filed a letter brief. We affirm the judgments.

FACTS

Case SA085913

On December 4, 2013, Los Angeles Sheriff's Department deputies went to a Marina Del Rey dock after a witness reported seeing a person who "did not look as if she belonged" aboard a boat. When the deputies spoke with Cogburn, she said she had been ill, that a friend owned the boat, and that he told her that she could use it "anytime she needed." The deputies contacted the vessel's owner who stated that he did not know Cogburn and had not given her permission to be on his boat. Further, that he had locked his boat and left it "completely clean." The boat appeared otherwise to the deputies. Later, the owner discovered that a pair of designer sunglasses and several bottles of wine were missing from the craft.²

The People filed a felony complaint charging Cogburn with first degree burglary (§ 459). Pursuant to a negotiated plea agreement, the prosecution moved to amend the complaint to allege second degree burglary as count 2. Cogburn waived her constitutional trial rights and pled no contest to the new count. At the sentencing hearing, the trial court dismissed count 1, following the terms of the plea bargain.

¹ All further section references are to the Penal Code.

² As Cogburn plead guilty before her preliminary hearing, our summary of facts is compiled from the probation officer's report.

The trial court suspended imposition of sentence and placed Cogburn on probation for a period of three years on the condition that she serve 72 days in the county jail, with credit for 72 days (36 actual days and 36 conduct credits). The court ordered Cogburn to pay \$1,500 in restitution, as well as the ordinary statutory fines, fees, and penalties. Further, the court ordered Cogburn to enter a 365 day residential treatment program, and to remain in the program until released by the program director.

Case SA086508

On February 9, 2014, the owner of a boat harbored in Marina Del Rey went to his craft with a friend and found Cogburn inside. Cogburn said she was supposed to be meeting a friend, and must have gotten on the wrong boat by accident. The owner and his friend called the police and did not allow Cogburn to leave until the police arrived. When the owner's friend noticed that his laptop was missing, he asked Cogburn where it was, and she pulled it from her jacket. The owner had never met Cogburn before and did not give her permission to be on his boat.³

Based on these events, the People filed an information charging Cogburn with first degree burglary.

Thereafter, Cogburn waived her constitutional trial rights and pled no contest, and admitted that she was in violation of probation on case No. SA085913. The trial court sentenced Cogburn to the middle term of four years in state prison, with 384 days of custody credits: 192 actual days and 192 conduct credits. The court suspended execution of sentence and placed Cogburn on probation, on condition she serve 365 days in jail, with credit for 384 days, and that she enter a one-year program at the Didi Hirsch facility associated with the Los Angeles County Mental Health Department. The court imposed an ordinary series of restitution fines and fees.⁴

³ As Cogburn pled guilty, our summary of facts is compiled from the preliminary hearing testimony.

⁴ With respect to case No. SA085913, the trial court reinstated Cogburn's probation.

Probation Violation, Other Proceedings and Sentencing

On December 17, 2014, the trial court called case No. SA086508 and case No. SA085913 for probation violation hearings based upon reports from the probation officer indicating that Cogburn had been arrested recently and had failed to report to scheduled probation meetings. The court revoked Cogburn's probation in both cases, and set the matters for further hearings.

Thereafter, the trial court adjourned the criminal proceedings in case No. SA086508 and case No. SA085913 based on mental competence proceedings (see § 1368) in Cogburn's new case. At that point, the court ordered Cogburn admitted to the custody of Patton State Hospital. The trial court found Cogburn competent a few months later based on a certification of competence from the state hospital and resumed the probation violation proceedings in case No. SA086508 and case No. SA085913.

After a number of continuances, the trial court conducted a joint probation violation hearing in case No. SA086508 and case No. SA085913. At that hearing, the People introduced a letter from the Didi Hirsch treatment facility indicating that Cogburn had enrolled for treatment on two separate occasions, and, both times, had failed to stay in contract with the facility, which had then discontinued treatment.⁵ The court found Cogburn in violation of the terms of her probation in both cases.

In case No. SA086508, the court ordered that Cogburn's four year sentence previously imposed and suspended to be placed in full force and effect. Cogburn was given credit for 427 days in custody (214 days of actual credit and 213 days of good time work time credits). In case No. SA085913, the court imposed an upper term of three years, and ordered the sentence on that case to be served concurrent with the sentence in case No. SA085913. Cogburn was given 499 days of credit (250 days of actual custody and 249 days of good time work time credit),

Cogburn filed a timely notice of appeal in case numbers SA086508 and SA085913.

⁵ Cogburn's trial counsel stipulated to the authenticity of the letter.

DISCUSSION

We appointed counsel to represent Cogburn on appeal. Appointed counsel filed an opening brief pursuant to *Wende, supra*, 25 Cal.3d 436, requesting independent review of the record on appeal for arguable issues. We then notified Cogburn by letter that she could submit any claim, argument or issue she wished our court to review. Cogburn filed a letter brief, which we discuss next.

Cogburn objects to “the process” which resulted in her convictions and sentences. Specifically, she contends: “I was never given counsel by my so-called attorney.” She contends her public defender did not advise her “how long [she] would be in prison” and did not “try to [persuade] the judge that [she] did not leave the program.” Further, that her lawyer did not attempt to show that a police officers at the scene of one of her arrests had made the following statement to her: “This should be trespassing, but I’m going to make it burglary because we’re tired of f---- with you.” Cogburn has asked that her counsel be “replaced” (she seems to be referring to her public defender in the trial court) or that our court “recognize [she] was not represented by counsel.” At another point in her letter, Cogburn asserts: “I am an innocent woman.”

As an initial matter, we reject Cogburn’s claim of innocence. “‘A guilty plea amounts to an admission of every element of the crime’ [Citation.]” (*People v. Jones* (1995) 10 Cal.4th 1102, 1109, overruled on a different point in *In re Chavez* (2003) 30 Cal.4th 643, 656.) Accordingly, “issues going to the defendant’s guilt or innocence . . . are not cognizable on appeal [Citations.]” (*People v. Jones, supra*, 10 Cal.4th at p. 1109.)

We treat the remainder of Cogburn’s letter as a claim of ineffective assistance of trial counsel and find no error justifying reversal. A defendant asserting a claim of ineffective assistance of trial counsel has the burden to demonstrate two elements. First, the defendant must show that her trial counsel failed to act in the manner to be expected of a reasonably competent attorney acting as a diligent advocate. Second, the defendant must show that it is reasonably probable that a more favorable determination would have resulted in the absence of counsel’s failings. (See, e.g., *People v. Lewis* (1990) 50 Cal.3d

262, 288; and see also *Strickland v. Washington* (1984) 466 U.S. 668.) Where the record on appeal does not allow for a meaningful examination and determination as to why a defendant's counsel acted as he or she did, or does not tend to show how some different performance by counsel would have resulted in a more favorable determination for a defendant, an ineffective assistance of claim is better presented through a petition for writ of habeas corpus. (See generally *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 267.)

Here, Cogburn's claims regarding the adequacy of counsel's advisements to her at the time of her pleas, as well as her claims regarding the scope of counsel's preparations for the probation violation hearings, are matters not readily reviewable on the face of the record. The record either does not show the acts or omissions by defense counsel about which Cogburn complains, or does not show the reasons for counsel's acts or omissions. For this reason, Cogburn cannot demonstrate the elements required for relief on appeal based on a claim of ineffective assistance of trial counsel.

We have independently reviewed the record on appeal, and find that appointed counsel has fulfilled his duty, and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d 436, *People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The judgments are affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.